

Important Developments and Requirements in Open Government: Presentation to TALPI

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Office of Open Records Counsel

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Tennessee Open Government Statutes

- Tennessee Public Records Act, 1957
(T.C.A. § 10-7-501 et seq.)
- Tennessee Open Meetings Act, 1974
(T.C.A. § 8-44-101 et seq.)

Tennessee

Open Government Statutes

- Balancing need of public to know what government is doing with:
 - ◆ Need of government employees to have “intellectually safe” work environment
 - ◆ Need of members of governing bodies to be able to deliberate and reach best decision

Office of Open Records Counsel

The functions of the Office (established by statute effective July 1, 2008) include:

1. Working to resolve issues (mediation) between citizens who have made open records requests and the local government records custodians.
2. Issuing informal advisory opinions to local government officials, members of the public, and the media regarding the TPRA as it applies to local governments. (15 issued to date)
3. Monitoring and commenting on proposed legislation that deals with open record or open meeting laws.



Office of Open Records Counsel

4. Collecting data on inquiries and problems pertaining to the Open Meetings laws.
5. Informing Tennesseans about the TPRA through speaking engagements and educational programs.
6. Reviewing open record policies of governmental entities to verify compliance with both the TPRA and current court opinions.
7. Reporting annually to the General Assembly and the Governor.



Office of Open Records Counsel

8. Establishing a schedule of reasonable fees for copies and duplication of public records, developing a safe harbor policy for records custodians who adhere to the policies and guidelines established by the OORC, and developing a policy for responding to frequent and multiple requests for access and copies.
9. Educating citizens and public officials through establishment of educational programs and materials about Tennessee's Open Meetings laws.
10. Working with 13 member Advisory Committee on Open Government for guidance and advice.



Advisory Committee on Open Government

Appointed by Comptroller of the Treasury:

Dorothy Bowles (Tennessee Coalition for Open Government)
Frank Gibson (Tennessee Press Association)
Chad Jenkins (Tennessee Municipal League)
Jay West (Tennessee County Services Association or County Officials Association of TN)
Amy Martin (Tennessee School Board Association)
Dick Williams (Common Cause)
Margie Parsley/Judy Poulson (League of Women Voters)
Joseph Dawson (Tennessee Hospital Association)
Mike Cutler (Tennessee Association of Broadcasters)
Chris Modisher (Tennessee Board of Regents or The University of Tennessee)

Ex Officio:

Janet Kleinfelter (designated by Attorney General Bob Cooper to represent his Office)
Senator Bill Ketron (Chairman of the Senate State and Local Govt. Committee)
Representative Ulysses Jones (Chairman of the House State and Local Govt. Committee)



Contact Information

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Open Meetings or Sunshine Law



T.C.A. § 8-44-101(a): The general assembly hereby declares it to be the policy for this state that the formation of public policy and decisions is public business and shall not be conducted in secret.

- The Act is to be construed most favorably to the public and applies to every meeting of a governing body except where statutory exclusion exists.
- The Act does not guarantee citizens the right to participate in meeting but rather to attend and observe.

Open Meetings or Sunshine Law



T.C.A. § 8-44-102 (b) :

- (1)(A) “Governing body” means: The members of any public body which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration . . .
- (2) “Meeting” means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. “Meeting” does not include any on-site inspection of any project or program.

Open Meetings or Sunshine Law



Chance meeting: T.C.A. § 8-44-102(c):

Nothing in this section shall be construed as to require a chance meeting of two (2) or more members of a public body to be considered a public meeting. No such chance meetings, informal assemblages, or electronic communication shall be used to decide or deliberate public business in circumvention of the spirit or requirements of this part.

Open Meetings or Sunshine Law



Adequate Public Notice: T.C.A. § 8-44-103: judged on facts and circumstances, not single formula

- Notice timing: notice is deemed sufficient if “interested citizens” are given reasonable opportunity to exercise right to be present at meeting.
- Notice content: reasonably described proposed action

Open Meetings or Sunshine Law



Electronic Participation T.C.A. § 8-44-108

Limited to boards, agencies and commissions of state government and “municipal governing bodies organized under title 6, chapter 18, and having a city commission of three (3) members, and having a population of more than two thousand five hundred (2,500), according to the 2000 federal census or any subsequent federal census”

Open Meetings or Sunshine Law



Electronic Participation T.C.A. § 8-44-108

An eligible governing body may (but is not required to) permit participation in a meeting by a member by electronic or other means of communication.

- ◆ Meeting must otherwise comply with the Act and not be used to circumvent the spirit or requirements of the Act
- ◆ Notice of the meeting must specify that participation by electronic or other means of communication will be permitted
- ◆ Members so participating must receive in advance copies of any documents to be discussed, substantially the same in content

Open Meetings or Sunshine Law



Remedial nature T.C.A. § 8-44-105

- If a meeting is held in violation of act, any action taken is void and of no effect; nullification of action rather than penal
- Commitments affecting public debt that are otherwise legal are not nullified or voided.
- Open Meetings Act does not make a distinction between technical and substantive violations of its provisions.

Open Meetings or Sunshine Law



Enforcement: T.C.A. § 8-44-106

- Circuit, chancery and other equity courts
- Court's written findings of fact and conclusions of law and final judgment are to be filed with minutes of governing body
- Court "shall permanently enjoin any person adjudged by it in violation of this part from further violation of this part. Each separate occurrence of such meetings not held in accordance with this part constitutes a separate violation
- Jurisdiction retained for one (1) year from entry of judgment; written reports due semiannually from defendants

Tennessee Public Records Act

T.C.A. § 10-7-503(a)(2)(A) *(as amended by Section 1 of PC 1179 effective July 1, 2008):*

All state, county and municipal records shall at all times, during business hours, which for public hospitals shall be during the business hours of their administrative offices, be open for **personal inspection** by any **citizen** of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by **state law**.





Public Record Defined

As used in this part and Title 8, Chapter 4, Part 6, "public record or records" or "state record or records" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.



Section 1 of PC 1179 adds this definition to T.C.A. § 10-7-503(a)(1), which is substantially the same definition found in T.C.A. § 10-7-301(6).

Tennessee Public Records Act

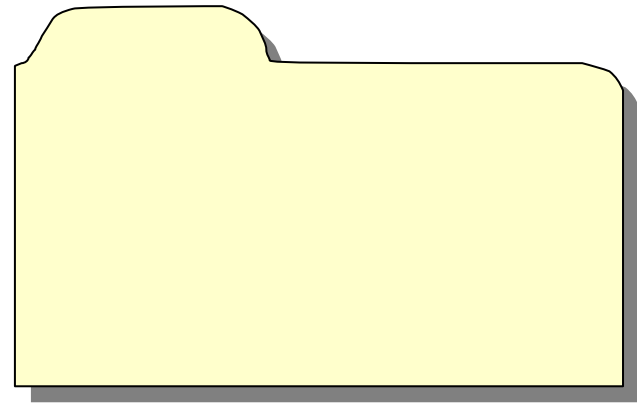
Other provisions of law provide access to records

- Open Meetings Law: T.C.A. § 8-44-104(a): “The minutes of a meeting of any such governmental body shall be promptly and fully recorded, *shall be open to public inspection*, . . .” (emphasis added)
- T.C.A. §10-7-604: Copies of Open Appointment Annual Report “available for viewing by interested persons” and “at cost”.

T.C.A. § 10-7-504 provides a list of records that are not open for public inspection; however this list is not exhaustive. Most of the exceptions to the Act are codified in various other parts of the Code.

Examples of Public Records

1. Work related emails, phone records, written correspondence.
2. Minutes and agendas of meetings of governing bodies.
3. Annual reports.
4. Employee files.
5. Policies and rules.
6. Customer lists.



Exceptions to the TPRA

Examples of Exceptions to the TPRA:

1. All investigative records of the TBI, Office of Inspector General, all criminal investigative files of the Department of Agriculture and the Department of Environment and Conservation, and certain files from the Department of Safety are confidential. (T.C.A. § 10-7-504(a)(2)(A)).
2. The identifying information compiled and maintained by any governmental entity concerning a person who has obtained a valid order of protection document **may** be confidential if certain steps are followed. (T.C.A. § 10-7-504(a)(16)(B)).

Exceptions to the TPRA

3. The identifying information compiled and maintained by utility service provider concerning a person who has obtained a valid order of protection document **shall** be treated as confidential and not open to the public if certain steps are followed. (T.C.A. § 10-7-504(a)(15)(B)).
 - “Identifying information”: home and work addresses and telephone numbers, social security number and other information that could reasonably be used to determine physical location.
 - “Utility Service Provider”: “any entity, whether public or private, that provides electricity, natural gas, water, or telephone service to customers on a subscription basis, whether or not regulated by the Tennessee Regulatory Authority.”

Exceptions to the TPRA

4. The telephone number, address and any other information which could be used to locate the whereabouts of a domestic violence shelter or rape crisis center *may* be treated as confidential by a governmental entity, and *shall* be treated as confidential by a utility service provider as defined in subdivision (a)(15) upon the director of the shelter or crisis center giving written notice to the records custodian of the appropriate entity or utility that such shelter or crisis center desires that such identifying information be maintained as confidential. (T.C.A. §10-7-504(a)(17)).

Exceptions to the TPRA

5. The credit card number of persons doing business with the state or political subdivision thereof and any related personal information identification numbers (PIN) or authorization codes. (T.C.A. § 10-7-504(a)(19); and “private records” or credit card numbers, social security numbers, tax identification numbers, bank account numbers, security codes, access codes, and burglar alarm codes associated with customers and customer accounts that are in possession of a public utility shall be treated as confidential (T.C.A. § 10-7-504(a)(20).
- Customer can authorize release of information (T.C.A. § 10-7-504(a)(20)(E).
 - Not limitation on access to information by law enforcement, courts, or other governmental agencies performing official functions (T.C.A. § 10-7-504(a)(20)(D).

Exceptions to the TPRA

6. Records allowing identification of areas of structural/operational vulnerability or permit unlawful disruption/interference with services by utility services provider and contingency plans of a governmental entity prepared to respond to or prevent any violent incident, bomb threat, ongoing act of violence at business, or terrorist incident. (T.C.A. § 10-7-504(a)(21)(A)).
 - Documents related to costs and vendors related to above not confidential, but confidential information to be redacted or deleted. (T.C.A. § 10-7-504(a)(21)(B)).
 - Utility Services Provider- (whether or not regulated by TRA) provides gas, water, sewer, or telephone services to Tennessee citizens. T.C.A. § 10-7-504(a)(21)(C)).

Exceptions to the TPRA

7. Records of any employee's identity, diagnosis, treatment, or referral for treatment that are maintained by any state or local government employee assistance program.
(T.C.A. § 10-7-504(d)).
8. Information that would allow a person to obtain unauthorized access to confidential information or to government property shall be maintained as confidential. For the purpose of this section, government property includes electronic information processing systems, telecommunication systems, or other communications systems of a governmental entity subject to this chapter.
(T.C.A. § 10-7-504(i)).

Exceptions to the TPRA

9. The following records or information of any state, county, municipal or other public employee, or of any records of any governmental employee that are in the possession of a governmental entity or any person in its capacity as an employer that contain *home and cell phone numbers; residential information (including street address, city, state and zip code) for state employees and residential street address for county, municipal and other employees**; bank account information; social security number; driver license information except where driving or operating a vehicle is part of the employee's job description or job duties or incidental to the performance of the employee's job; and the same information of immediate family members or household members.

(T.C.A. § 10-7- 504(f)(1)). *PC853, effective May 1, 2008



Exceptions to the TPRA

10. Information and documents regarding any mental health service applied for or received by any person currently or in the past and any information directly or indirectly identifying the person receiving the service. (T.C.A. § 33-3-103).
11. Expunged records (T.C.A. § 40-32-101).
12. Information communicated to or obtained by an accountant as a result of the confidential nature of employment and/or information derived from professional employment is confidential. (T.C.A. § 62-1-116).

Exceptions to the TPRA

13. Taxpayer information submitted to the commissioner of the Department of Revenue (T.C.A. § 67-1-110).
14. All Department of Revenue statements, reports, returns, and audits of any person paying business tax are confidential, with limited exceptions. (T.C.A. § 67-4-722(c)(1)).
15. A part from a taxpayer's annual reporting schedule filed with the assessor, information required to be filed or submitted by a taxpayer with regard to an assessment of tangible personal property, or provided by a taxpayer in response to an audit or information request by assessing officials or their agents with regard to an assessment of tangible personal property, shall be confidential and shall not be disclosed by state or local officials, agents or employees. (T.C.A. § 67-5-402(a)).

Exceptions to the TPRA

16. Social Security Numbers may not be disclosed by state entities, unless disclosure falls within enumerated exception (T.C.A. § 4-4-125)
17. Tenn. R. Crim. P. 16(a)(2) provides for the confidentiality of investigative files pertaining to pending or contemplated criminal action.
18. Health Insurance Portability and Accountability Act of 1996 (HIPAA)
19. Tenn. Sup. Ct. R. 8, RPC 1.6-Attorney-Client Privilege

TPRA Open Records Request

- ◆ Access to citizens of Tennessee
- ◆ No charge for inspecting or reviewing an open record at office.
- ◆ Promptly available for inspection
 - When not practicable to promptly make available, may take up to 7 business days to:
 - ◆ Provide access to record;
 - ◆ Deny in writing (or on OORC form) access to record with explanation of basis for denial; or
 - ◆ Indicate additional time necessary to produce the record (OORC form mandatory).

tn.gov/comptroller/openrecords/forms.htm



Open Records Request (cont.)

- ◆ May require production of government issued photo id with address in order to inspect or to receive copies.
- ◆ Request for copies may be required to be in writing.
 - Not able to require request for inspection to be in writing.
- ◆ Request is to “be sufficiently detailed to enable the custodian to identify the specific records”.
- ◆ Estimation of costs to provide copies and possible upfront payment (whole or in part).
- ◆ Fees above \$0.15 b+w/.50 color per page must be justified.